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Total Number of Pages in This Submission

5

Application Number

10/717,377

Filing Date

11-19-2003

First Named Inventor

Steven Driediger, e

Art Unit

2138

Examiner Name

Chung, Phung M

Attorney Docket Number

1400.1375180

### ENCLOSURES (Check all that apply)

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Remarks

### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name			
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Printed name	Ross D. Snyder		
Date	04-20-2007	Reg. No.	37,730

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): Steve Driediger, et al.

Title: **METHOD AND APPARATUS FOR DETECTION OF TRANSMISSION UNIT  
LOSS AND/OR REPLICATION**

App. No.: 10/717,377

Filed: 11-19-2003

Examiner: Chung, Phung M

Group Art Unit: 2138

Atty. Dkt. No. 1400.1375180

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PO Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO EXAMINER'S RESTRICTION REQUIREMENT**

Dear Sir:

**REMARKS**

The Office has restricted the claims 1-49 of this application into Groups I (claims 1-42 and 49) and II (claims 43-48).

Applicants elect the claims of Group I (claims 1-42 and 49) and provisionally withdraw the non-elected claims of Group II (claims 43-48). The restriction is respectfully traversed in order to preserve the issue for subsequent petition since the examination of all of the claims 1-49 does not create an undue burden on the Office and the subject matter among the groups is not independent and distinct as required by statute.

Applicants note MPEP § 811 states, "37 CFR 1.142(a), second sentence, indicates that a restriction requirement 'will normally be made before any action upon the merits...' and "...the examiner should make a proper requirement as early as possible in the prosecution, in the first action if possible, otherwise, as soon as the need for a proper requirement develops." Applicants submit MPEP § 811 requires that, if a restriction requirement is not made in the first action, "the need for a proper requirement" must develop before a restriction requirement may be made. However, Applicants note the claims remain unchanged. In light of the unchanged claims, Applicants submit the Examiner has not shown how "the need for a proper requirement" has developed subsequent to the first action.

Applicants submit the Examiner's restriction requirement is untimely and should properly be withdrawn.

Applicants further note MPEP § 811 states, "Before making a restriction requirement after the first action on the merits, the examiner will consider whether there will be a serious burden if restriction is not required." Applicants submit the Examiner has not properly established that there will be a serious burden if restriction is not required. Applicants note that MPEP § 803 states, as "CRITERIA FOR RESTRICTION BETWEEN PATENTABLY DISTINCT INVENTIONS," "There would be a serious burden on the examiner if restriction is not required (see MPEP § 803.02, § 808, and § 808.02)" and also states "If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions." MPEP § 803 further states, "For purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02. That *prima facie* showing may be rebutted by appropriate showings or evidence by the applicant."

Even though the Examiner now alleges claims 1-42 and 49 to be directed toward subject matter classified in class 714, subclass 712 and claims 43-48 to be directed toward subject matter classified in class 714, subclass 707, Applicants note the Examiner has already issued a first Office action in the present application and, incident thereto, has apparently already performed a search without undue burden, as evidenced by the Form PTO-892 attached thereto. Moreover, Applicants note the claims remain unchanged. Thus, Applicants submit the Examiner's apparent completed search and examination without undue burden provides evidence to rebut any supposed *prima facie* showing of purported serious burden on the Examiner. Furthermore, different classifications as recited by the Office are not in and of itself adequate grounds for restriction since the Office has historically allowed many applications containing (method, and apparatus system and computer readable medium) claims in one patent application.

Therefore, in accordance with MPEP § 803, as Applicants submit the Examiner has provided evidence that "...the search and examination of all the claims in an application can be made without serious burden..." by the Examiner's apparent search and examination of the entire application

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requisite to issuance of the first Office action, Applicants submit "...the examiner must examine them on the merits, even though they include claims to independent or distinct inventions."

The Applicants further disagree with the characterizations relied on by the Office to support distinctness of the groups.

In summary, Applicants have elected the claims of (Group I) for further prosecution and provisionally withdrawn the non-elected claims from consideration. Reconsideration and further prosecution on the merits of claims in (Group II) is respectfully requested.

Respectfully submitted,

04-20-2007

Date



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